

REMARKS/ARGUMENTS

The Applicant respectfully submits the following Remarks/Arguments:

II. CLAIM REJECTIONS UNDER 35 USC 103

Based on the current amendment of independent claims 1 and 13, presented herein, Applicant respectfully contends that the housing member of Applicant's claims 1 and 13 is not rendered obvious by the housing member disclosed by Malone et al. or Hartley. Both devices include housings designed to simulate the look of a woman's purse or handbag, where Applicant's device is specifically designed in such a way as to not provide for any camouflaging of its deterrent capabilities. An individual carrying the device of Malone et al. or Hartley will not deter attackers simply by carrying the device, while carrying the device disclosed and claimed by applicant will have the added feature of deterring attacks before they happen. Therefore, claim 1 can not be said to be obvious to a person of ordinary skill in the art.

Claims 2-12, and claims 14-19 will likewise not be rendered obvious as they properly depend from claims 1 and 13 respectively.

Further, Applicant's claim 2 is rejected based on the contention that the housing member (purse) disclosed by Malone et al. has a first aperture 18 for allowing release of the repellant spray. As noted above, Malone et al. claims "said handle of the handbag having a hole through which pepper spray is dispersed." Malone et al. col. 4 lines 11-12.

This distinction is not merely semantics, rather it illustrates that the handle is not part of the handbag. It also illustrates that the handle of the handbag has the aperture for dispersing the repellant, and it is not the handbag itself that has the aperture as claimed by

the Examiner. Therefore, even if the purse was viewed as meeting the housing member element, the aperture is not part of the housing. This point is further illustrated when contrasted with the limitation concerning the second aperture for the sound generating device, which is located on the purse. The Examiner's rejection of Applicant's claim 3 states that the housing member of Malone et al. has a second aperture for allowing emission of the sound generated from the sound device member. According to the disclosure provided by Malone et al., that limitation discloses "the *handbag* having a vent," which is clearly different than the *handle* of the handbag as claimed in a previous limitation. Malone et al. col. 4 line 13 (emphasis added).

Therefore, it should be seen that even if the handbag is considered as meeting the housing member element of Applicant's invention, it can not be rightly argued that the housing member of Malone et al. has a first aperture for dispersing repellant spray. The first aperture disclosed by Malone is located within the handle of the handbag, not within the handbag itself. Accordingly, claim 2 is not rendered obvious by Malone et al. because the housing member does not include a first aperture for dispersing repellant.

Applicant's claim 7 includes the limitation of an actuator integrated with the housing member. As mentioned above, Malone et al. discloses a separate handle, in addition to the handbag. The actuating means disclosed by Malone et al. is "located in a handle of the handbag." Malone et al., col. 4 lines 6-8. Applicant's invention claims an actuator that is integrated with the housing member, not in a peripheral component, such as a handle. Although the handle of the handbag disclosed by Malone et al. may be connected to the handbag, it can not be said that this indirect connection integrates the

actuator within the handbag. As a result, Applicant's claim 7 is not anticipated by Malone et al. because the actuator disclosed by Malone et al is not integrated with the housing member. Accordingly, Applicant's claim 7 should be allowed.

With regard to the Examiner's rejection of Applicant's claim 8, the Examiner has stated that Malone et al. discloses that the repellant is a noxious gas. However, the citation that the Examiner notes (col. 2, lines 16-18) reads as follows: "A chamber 19 is located at the base of the handle distal end. This chamber 18 opening allows a pepper spray stream to pass." Nowhere in Malone et al. is there reference to a "noxious gas," or of any type of gas at all. Malone et al. claims, and the specification supports, only the use of "pepper spray." Various citations on the Internet may be found discussing the make-up of pepper spray. The following description is one example:

OC is oleoresin capicum, which is extracted from chili peppers and is commonly called Pepper Spray. This product is the most widely sold today and the spray of choice for police since 1977. Pepper spray is generally regarded to be the most distressing to experience, but it must be sprayed directly in the eyes or inhaled to be effective. *The product is an oily liquid* not very soluble in water. McGoe, Chris E., http://www.crimedocter.com/self_defense_1.htm, Last Updated 4/30/2004 (emphasis added).

A similar definition can be found in the dictionary that defines "pepper spray" as: "a nonlethal aerosol spray made with the pepper derivative oleorsein capicum; used to cause temporary blindness and incapacitate an attacker; also used as a bear deterrent." <http://wordnet.princeton.edu/cgi-bin/webwn2.0?stage=1&word=pepper+spray>, Wordnet A Lexical Database For the English Language, Last Visited June 01, 2004.

Therefore, it is seen that pepper spray is not a gas at all, but a liquid. As a result, contrary to the Examiner's assertion, Malone et al. does not disclose that the repellant is a

noxious gas. Accordingly, Applicant's claim 8 is not anticipated by Malone et al. and should be allowed.

The Examiner has also rejected claims 10 and 11 as being obvious by the disclosure of Malone et al. Because the two claims and respective rejections are closely connected, both will be dealt with simultaneously to avoid repetitious argument. The Examiner's rejections of claims 10 and 11 both state that the Malone et al. discloses a sound generating member comprised of a compressed gas container coupled to a horn and a whistle, respectively. However, nowhere in the Examiner's citation (col. 2, lines 25-44) is there reference, explicitly or implicitly, to either compressed gas, whistles or horns. Malone et al. discloses merely an "air siren canister," an "air siren," and a "piercing sound." Malone et al. at col. 2 lines 25-44. Applicant's sound generating member contains such details in the specification as "a compressed gas container 8 coupled to a horn 9 via a second tube." Applicant's Detailed Description page 3 para. 17. Malone et al. does not disclose the use of a second tube, nor does it disclose a compressed gas container coupled to a horn. Regardless of how the air siren of Malone et al. generates its "piercing sound," it does not disclose the specific limitations found in Applicant's invention. Therefore, Malone et al. can not be said to anticipate Applicant's claim 10. The same arguments are equally applicable to Applicant's claim 11, substituting a whistle for the horn. Accordingly, neither claim 10 nor claim 11 are anticipated by Malone et al. and should be allowed.

The rejections for claims 13, 15, 17 and 18 are similarly rebutted as mentioned above, and said rebuttal arguments should be considered equally applicable to the

respective claims (i.e. the purse does not function as a housing member; the housing member does not contain the first aperture in contrast to the second aperture; the actuator is integrated in the handle of the handbag, not in the housing member; the repellant is pepper spray, not a noxious gas; the sound generating member is not disclosed as compressed gas coupled to a horn or a whistle).

The Examiner has rejected claims 5 and 6 as being unpatentable over Malone in view of Keeter. The Examiner notes that Malone et al. discloses an actuator that activates both spray and sound simultaneously. The Examiner cites Keeter as disclosing a three position mini-slide switch that would enhance the system of Malone et al. by giving the user an option of selecting the particular mode, as desired. Therefore, the Examiner concludes that the combination of Malone et al. and Keeter would render Applicant's invention obvious. The Examiner argues specifically that substituting the switch 28 of Keeter with the switch 12 of Malone et al. will render Applicant's invention obvious, and therefore, unpatentable.

The switch referenced by the Examiner is a "three position double pole mini-slide switch." Keeter at col. 4 lines 17-18. As disclosed by Fig. 6, the switch disclosed by Keeter is part of an electrical circuit that when closed, will complete the circuit for either the lights, the audible alarm, or both. Keeter at Fig. 6.

The switch disclosed by Applicant's invention is a manually operated, slidable switch that requires the physical depression of an actuator pad. Chiapperini, U.S. Pat. Appl. No. 10/065,022 para. 17 and Fig. 1. The switch disclosed by Applicant will result

in the depression of subsequent actuator pads that actuate either spray, sound, or both simultaneously. Chiapperini at para. 17 and Fig. 1.

It should be clear that substituting the switch of Keeter for the switch of Malone et al. will result in a personal protection device that is inoperable. There is no electrical component disclosed within Malone et al. that will operate with the switch of Keeter. A device resulting from the combination of two or more patents that results in an inoperable product can not be said to render Applicant's invention obvious. Therefore, the combination of Malone et al. and Keeter will not produce a combined teaching that will result in making Applicant's invention obvious to one of ordinary skill in the art at the time the invention was made. As a result, claims 5 and 6 are not unpatentable under 35 USC 103(a) in light of Malone et al. in view of Keeter.

The Examiner also has rejected claims 12 and 19 as being unpatentable over Malone et al. in view of Masi et al., U.S. Pat. No. 5,517,180. Masi et al. teaches an alternative use of the claimed device in deterring vicious dogs by providing a high pitched frequency. Masi et al. col 9, lines 14-18. Applicant's invention as disclosed in claims 12 and 19, claims a sound generating member that "has means for emitting sounds waves that are audible to animals and not audible to humans." Chiapperini at Claims 12 and 19.

The key difference between the teaching of Masi et al. and Applicant's invention is that Masi et al. only teaches a high pitched frequency, not a sound that is audible to animals and inaudible to humans. The sound waves emitted by Applicant's invention may or may not be a high pitched frequency, the only limitation is that it be audible to

animals and not to humans. Masi et al. does not teach a device that emits sound waves that are inaudible to humans. The high pitched frequency disclosed by Masi et al. could deter dogs while still being audible to humans. Masi et al. does not disclose any type of instruction as to how high a frequency would suffice to deter dogs, nor does Masi et al. indicate whether the high pitched frequency would be within the hearing range of humans or not. As a result, the only thing that Masi et al. has in common with Applicant's invention with respect to the sound waves is that they are emitted from the device. Therefore, a significant difference exists between the sound waves emitted from the two devices; and this difference is so significant that it removes any possibility that Applicant's invention could be rendered obvious under 35 USC 103.

Therefore, reconsideration and further examination is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account No. 12-0115.

In the event that an extension of time is required to file this response, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 12-0115.

Appl. No. 10/065,022
Response dated November 25, 2004
Reply to Office action of August 25, 2004

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Patrick D. Archibald, Applicant's Attorney at (617) 720-0091 so that such issues may be resolved as expeditiously as possible.

For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

11/25/2004 Patrick D. Archibald
Date Patrick D. Archibald
Attorney for the Applicant
Reg. No. 52,464

Patrick D. Archibald
Lambert & Associates
92 State Street
Boston, MA 02109
617-720-0091